Puspavathy a/p Thaveethu v Majlis Perbandaran Klang & Ors and other appeals

A

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS B-02-666 OF 2000, B-02–402 OF 2002 AND B-02–403 OF 2002
RICHARD MALANJUM, TENGKU BAHARUDIN JJCA AND AZMEL J
11 SEPTEMBER 2008

B

C

Civil Procedure — Originating summons — Setting aside — Allegation of non-service — Whether non-service amounted to mere irregularity or a nullity of proceedings and/or order

D

Land law — Sale of land — Order for — Application to set aside order for sale — Whether purchaser acquired indefeasible title — Whether bona fide purchaser for valuable consideration

E

Limitation — Land — Order for sale — Property sold at public auction — Application to set aside order for sale — Whether application time barred — Applicable provision

F

Revenue Law — Property tax — Assessment — Failure to pay assessment rate — Property sold at public auction pursuant to order for sale — Application to set aside order for sale — Whether application time barred — Applicable provision

G

The eighth defendant/appellant ('D8') was one of the eight co-proprietors of a parcel of land, which was sold at a public auction pursuant to ss 146, 148 and 151 of the Local Government Act 1976 by the plaintiff/first respondent for the failure to pay the assessment rate. The land was sold to the second intervener/third respondent who had charged it to the first intervener/second respondent. D8 challenged the order for sale as being a nullity since the originating summons was not served on her. The application was allowed by the High Court but only to the extent of her 1/16 share in the said land. Dissatisfied with the order of the judge, D8, the plaintiff and the second intervener appealed on the issues of, inter alia, whether the non-service of the originating summons amounted to mere irregularity or a nullity; whether D8's application was time barred by virtue of s 8(b) of the Limitation Act 1953 ('the LA'); and whether s 340 of the National Land Code confers an indefeasible title on the second intervener.

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I

Held, dismissing the eighth defendant's appeal with costs and allowing the plaintiff and second intervener's appeal with costs:

(1) Order 2 r 1 of the Rules of the High Court 1980 states that where in beginning with any proceedings, there is a failure to comply with the requirements of these rules, the failure shall be treated as an irregularity and shall not nullify the proceedings. And further based on the authorities, the plaintiff's failure to comply with the RHC merely rendered the order for sale an irregularity and not a nullity of the whole proceedings. To set aside the said order which was only irregular, at such a late stage would therefore be unfair to the second intervener who had already incurred expenses and committed to obligations after having purchased the said land pursuant to the order for sale by a court of law of competent authority (see paras 19 & 23).

(2) In the instant case, the claim was revenue in nature and since the plaintiff was making the claim under a delegated power derived from the State Authority, s 8(b) of the LA 1953 should apply. However the period should commence from the date when the sale was confirmed which was the publication date of the proclamation of sale in the relevant daily newspaper. On the facts, there was delay of two months in filing her application and accordingly D8 was time barred (see para 25).

(3) Being a purchaser in good faith and for valuable consideration having paid the balance purchase price within the stipulated time, the second intervener had acquired an indefeasible title or interest to the said land upon being registered as the registered proprietor (see para 42).

[Bahasa Malaysia summary

Defendan/perayu kelapan ('D8') adalah salah seorang daripada lapan orang tuan punya bersama sebidang tanah yang mana telah dijual di lelongan awam menurut ss 146, 148 dan 151 Akta Kerajaan Tempatan 1976 oleh plaintif/responden pertama kerana kegagalan membayar cukai taksiran. Tanah tersebut telah dijual kepada pencelah kedua/responden ketiga yang telah menggadaikannya kepada pencelah pertama/responden kedua. D8 mencabar perintah jualan yang mana adalah tidak sah kerana saman pemula tidak disampaikan kepadanya. Permohonan telah dibenarkan oleh Mahkamah Tinggi tetapi hanya setakat 1/16 bahagiannya dalam tanah tersebut. Tidak berpuas hati dengan perintah mahkamah, D8, plaintif dan pencelah kedua telah merayu atas isu-isu, antara lain, sama ada kegagalan menyampaikan saman pemula menyebabkan hanya ketidakpatuhan atau satu pembatalan, sama ada permohonan D8 telah luput masanya berdasarkan s 8(b) Akta Had Masa 1953 ('AHM'); dan sama ada s 340 Kanun Tanah

Negara ('KTN') memberikan hak milik yang tidak boleh disangkal ke atas pencelah kedua. A

Diputuskan, menolak rayuan defendan kelapan dengan kos dan membenarkan rayuan plaintif dan pencelah kedua dengan kos: B

(1) Aturan 2 k 1 Kaedah-Kaedah Mahkamah Tinggi 1980 menyatakan bahawa di mana dalam memulakan apa-apa prosiding, berlakunya kegagalan untuk memenuhi sysrat-syarat kaedah-kaedah ini, kegagalan tersebut hendaklah dianggap sebagai ketidakpatuhan dan tidak seharusnya membatalkan prosiding. Dan selanjutnya berdasarkan kepada autoriti-autoriti, kegagalan plaintif untuk memenuhi KMT hanya menyebabkan perintah jualan adalah di luar aturan dan bukannya pembatalan keseluruhan prosiding. Untuk mengenepikan perintah tersebut yang mana hanya di luar aturan, pada peringkat kelewatan tersebut oleh itu tidak adil kepada pencelah kedua yang mana telah menanggung perbelanjaan dan terikat dengan tanggungjawab selepas membeli tanah tersebut berdasarkan kepada perintah jualan oleh mahkamah perundangan yang mempunyai kuasa yang kompeten (lihat perenggan 19 & 23) C D E

(2) Dalam kes ini, tentutan adalah bersifat penghasilan dan sejak plaintif membuat tuntutan di bawah kuasa berwakil yang terbit daripada pihak berkuasa negeri, s 8(b) Akta Had Masa 1953 adalah terpakai. Tetapi tempoh seharusnya bermula daripada tarikh apabila penjualan telah disahkan yang mana adalah tarikh penerbitan pengisytiharan penjualan di dalam surat khabar harian yang relevan. Berdasarkan fakta, terdapat kelewatan dua bulan dalam pemfailan permohonannya dan oleh itu D8 adalah terhalang oleh had masa (lihat perenggan 25) F

(3) Sebagai pembeli yang suci hati dan bagi nilai balasan baki harga belian yang telah dibayar di dalam masa yang ditetapkan, pencelah kedua telah memperoleh hakmilik yang tidak boleh disangkal terhadap tanah tersebut apabila didaftarkan sebagai tuan punya berdaftar (lihat perenggan 42)] G H

Notes

For a case on order for sale under limitation, see 9 *Mallal's Digest* (4th Ed, 2005 Reissue) para 2328.

For cases on assessment, see 10 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2480–2485. I

For cases on order for sale of land, see 8 *Mallal's Digest* (4th Ed, 2006 Reissue) paras 4131–4234.

For cases on setting aside originating summons, see 2(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 4903–4905.

Cases referred to

Adorna Properties Sdn Bhd v Boonsom Boonyanit @ Sun Yok Eng [2001] 1 MLJ 241 (folld)

Asia Commercial Finance (M) Sdn Bhd v Development and Realtor Sdn Bhd [1992] 2 MLJ 504 (refd)

Ban Guan Hin Reality Sdn Bhd v Sunny Yap Chiok Sai & Ors [1989] 1 MLJ 131 (refd)

Boonsom Boonyanit v Adorna Properties Sdn Bhd [1997] 2 MLJ 62 (refd)

Khor Cheng Wah v Sungai Way Leasing Sdn Bhd [1996] 1 MLJ 223 (folld)

Lai Yoke Ngan & Anor v Chin Teck Kwee & Anor [1997] 2 MLJ 565 (folld)

Lee Hock Ning v Government of Malaysia [1972] 2 MLJ 12 (refd)

M & J Frozen Food Sdn Bhd & Anor v Siland Sdn Bhd & Anor [1994] 1 MLJ 294 (refd)

Muniandy a/l Thamba Kaundan & Anor v D & C Bank Bhd & Anor [1996]1 MLJ 374 (refd)

Puah Bee Hong & Anor v Pentadbir Tanah Daerah Wilavah Persekutuan Kuala Lumpur & Anor (Teo Keng Tuan Robert, intervener) and another appeal [1994] 2 MLJ 601 (folld)

Legislation referred to

Federal Constitution art 13(1)
Limitation Act 1953 s 8(2), 8(b)
Local Government Act 1976 ss 124, 146, 148, 151
National Land Code s 340, 340(2), 340(2)(b), 340(3)
Public Authorities Protection Ordinance 1948 s 2
Rules of the High Court 1980 O 2 r 1, O 10 r 1(1), O 10 r 5, O 28 r 3, O 83 r 2(2), O 83 r 2(3)

Appeal from: Originating Summons No 24–864 of 1992 (High Court, Shah Alam)

*George Proctor (YS Woo & Proctor) for the appellant in Civil Appeal No B-02–666 of 2000 & for the respondent in Civil Appeal Nos B-02–402 of 2002 & B-02–403 of 2002.*I

Jamilah (Rashid Asari & Co) for the first respondent in Civil Appeal No B-02–666 of 2000 and for the appellant in Civil Appeal No B-02–402 of 2002.

TL Gan (Yong & Rakan-Rakan) for the second respondent in Civil Appeal No B-02–666 of 2000.

K Maniam (Skrine) for the third respondent in Civil Appeal No B-02–666 of 2000 and for the appellant in Civil Appeal No B-02–403 of 2002.

Richard Malanjum JCA (now CJ Sabah & Sarawak) (delivering judgment of the court):

INTRODUCTION AND BACKGROUND FACTS

[1] There are three appeals before us arising from the same matter, Originating Summons No 24–864 of 1992. The appeals are as follows:

(a) Civil Appeal No B-02–666 of 2000 by the eighth defendant in the originating summons (first appeal);

(b) Civil Appeal No B-02–402 of 2002 by the plaintiff in the originating summons (second appeal); and

(c) Civil Appeal B-02–403 of 2002 by the second intervener in the originating summons (third appeal).

[2] In this judgment the original references in the originating summons to the plaintiff, defendants and interveners are maintained.

[3] Briefly the background fact of the case is that the eighth defendant was one of the eight co-proprietors of a parcel of land held under E7 809 Lot 431 Seksyen MK at TBG Nos 241 & 243 Jalan Telok Pulai, Klang ('land').

[4] As the co-proprietors of the said land failed to pay the assessment rate amounting to RM21,887 as at 1 September 1992 the plaintiff filed an application by way of originating summons to the Shah Alam High Court on 9 November 1992 seeking an order for sale of the said land pursuant to ss 146, 148 and 151 of the Local Government Act 1976.

[5] On 6 July 1994 the High Court at Shah Alam made the order as prayed for.

[6] Thus, by way of public auction the said land was therefore sold on 6 June 1995. The successful bidder was the second intervener.

[7] In compliance with the order for sale the learned deputy registrar of the High Court Shah Alam duly executed the certificate of sale on 21 September 1995.

[8] On 11 December 1995 the second intervener was registered as the registered proprietor of the said land.

[9] As the second intervener had subsequently charged the said land to OCBC Bank (M) Bhd, the first intervener was registered as the chargee of the said land.

[10] On 21 November 1996 the eighth defendant by way of summons in chambers applied to the Shah Alam High Court to set aside the order for sale alleging that it was a nullity since the originating summons was not served on her.

[11] The first and second interveners on application were allowed to intervene in the application by the eighth defendant.

[12] On 17 August 2000 the learned High Court judge allowed the application by the eighth defendant but only to the extent of her 1/16 share in the said land.

[13] Dissatisfied with the order of the learned judge the appellants appealed and these appeals thus came before us.

[14] Having heard the arguments we came to the following decisions, namely:

(a) In respect of the first appeal we dismissed it with costs to be taxed and the deposit to the respondents to account for taxed costs. We were unanimous that s 8(2) of the Limitation Act 1953 applies. We were also of the view that there is merit in the issue of bona fide purchaser not only in relation to the appellant in the third appeal but also to the second respondent in the first appeal, namely OCBC Bank (M) Bhd; and

(b) In respect of second and third appeals, we allowed them with costs to be taxed and their deposits to be refunded. In other words, we set aside the order the learned High Court judge to exclude 1/16 share of the eighth defendant.

[15] The appellant in the first appeal is now appealing to the Federal Court against our decisions. This is therefore the reasons in coming to our decisions.

[16] From the submissions made before us we opined that the determinative issues for consideration should be as follows:

(a) whether the non-service of the originating summons amounts to mere irregularity or a nullity;

(b) whether the eighth defendant's application is time barred by virtue of s 8(b) of the Limitation Act 1953; and

(c) whether s 340 of the National Land Code confers an indefeasible title on the second intervener.

Issue (a)

[17] The eighth defendant contended that O 10 r 5 of the Rules of the High Court 1980 ('RHC') requires an originating summons to be served in a manner as a writ ie, O 10 r 1(1) and O 83 r 2(2) and (3) also require service on the defendants of the notice to hear originating summons. The affidavit of service filed by the plaintiff showed that only the sixth defendant in the court below had been served with the notice to hear originating summons. As the originating summons and notice to hear originating summons were not served to the eighth defendant, therefore the plaintiff had failed to comply with O 10 r 5 of the RHC and O 83 r 2(2) and O 28 r 3 of the RHC. Despite that, the High Court gave an order for sale and the land was sold by public auction to the second intervener who later charged the same to the first intervener. Therefore the failure to serve the originating summons and the notice to hear originating summons renders the order for sale dated 6 July 1994 a nullity. The eighth defendant relied on the case of *Muniandy a/l Thamba Kaundan & Anor v D & C Bank Bhd & Anor* [1996] 1 MLJ 374 and *M & J Frozen Food Sdn Bhd & Anor v Siland Sdn Bhd & Anor* [1994] 1 MLJ 294.

[18] In response the plaintiff argued that the originating summons was served on all defendants at the said address with the sixth defendant receiving and acknowledging receipt on behalf of the other defendants on the following basis:

(i) The last known address of the defendants was at the sixth defendant's premises ie, No 84 Tingkat 1 Jalan Kapar, 41400 Klang, Selangor Darul Ehsan;

(ii) There is a joint venture agreement between the sixth defendant and the other landowners for the development of the said property and the title of the same was in the custody of the sixth defendant since 1974;

(iii) Prior to the plaintiff's action against the defendant, all notices and/or correspondence were directed and served on the sixth defendant as the addresses and details of the other defendants were not within the plaintiff's knowledge;

(iv) The sixth defendant admitted in her affidavit that she had contacted the other defendants including the eighth defendant to settle the claim by the plaintiff however, the other defendants have neglected, refused and/or ignored to respond to sixth defendant's appeal; and

(v) The burden of proof lies on the sixth defendant to prove that the originating summons was not served on her if she claims that she did not received the same.

[19] Now, O 2 r 1 of the RHC states that where in beginning with any proceedings, there is a failure to comply with the requirements of these rules, the failure shall be treated as an irregularity and shall not nullify the proceedings.

[20] In *Khor Cheng Wah v Sungai Way Leasing Sdn Bhd* [1996] 1 MLJ 223, the Court of Appeal held that:

> ... after the coming into force of the Rules of High Court 1980, the distinction between irregularities and nullities ceased to exist. All acts and omissions that amounts to non-compliance with one or more of the rules of court result in their being curable irregularities, and not nullities. Indeed, it is quite inappropriate to say an order or decision of a court of unlimited jurisdiction (such as the High Court and other superior courts) that it is a nullity; *Isaacs v Robertson* [1985] AC 77 followed ...

[21] Similarly, in *Lai Yoke Ngan & Anor v Chin Teck Kwee & Anor* [1997] 2 MLJ 565 at p 578, the Federal Court held that:

> ... the proper approach is for the court to accept that a breach of a rule of court renders the particular proceedings irregular with a power in the court to excuse the non-compliance. That power, as in all matters calling for crucial discretion, is to be exercised judicially having regard to the substantial merits of the case and having particular regard to the interest of justice. Thus, for example, to say that a judgment entered for too much is automatically bad or is automatically curable is to take an extreme position that is unsustainable in law. Such judgment may be set aside if to cure it by amendment would do greater injustice to the particular defendant. On the other hand, such a judgment may be cured by amendment if not to do thus would result in greater injustice to the plaintiff. Ultimately, it is the objective perception of a court as to where the justice in a particular case lies that determines whether the irregularity should be cured. If the court decides the particular case to be unfit for the exercise of the curative power, then it may set aside the judgment, order or other proceedings.

[22] It should also be noted that once an order is made by the court it is binding and valid until set aside. In the *Puah Bee Hong & Anor v Pentadbir Tanah Daerah Wilayah Persekutuan Kuala Lumpur & Anor (Teo Keng Tuan Robert, intervener) and another appeal* [1994] 2 MLJ 601, the then Supreme Court states thus:

> We are of the considered view that an order of the supreme court such as the High Court, even if it is eg, an order obtained ex parte or a default judgment; until it is set aside, must be obeyed by everyone whether its validity is challenged or not,

and it is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until the order is discharged; per Romer LJ in *Hadkinson v Hadkinson*. This passage was quoted with approval and adopted by this court in *Pembinaan KSY Sdn Bhd v Lian Seng Properties Sdn Bhd*. It was stated in *Isaacs v Robertson* that it was misleading to describe such an order of competent jurisdiction as void or voidable, for every order must be obeyed until it was set aside and 'these are not orders which are void *ipso facto* without the need for proceedings to set them aside'. One of the reasons is that such a superior court must be presumed to have the jurisdiction to make an order which it has made. Every order made by a superior court must be regarded as an order of a competent jurisdiction.

[23] Thus, applying the principles enunciated in the cases above, we are of the view that the plaintiff's failure to comply with the Rules of the High Court merely renders the order for sale obtained on 6 July 1994 irregular and not a nullity of the whole proceeding. At any rate the said order might be irregular nonetheless it had to be obeyed so long as it had not been set aside. Indeed the said order had been further proceeded with. In this case the second intervener had already purchased the said land at the public auction ordered by the court before it was set aside. Hence, to set aside the said order which was then only irregular at such a late stage would therefore be unfair to the second intervener who had already incurred expenses and committed to obligations after having purchased the said land in a public auction pursuant to order for sale by a court of law of competent authority.

Issue (b)

[24] The sequence of events was not in dispute, that is, the said order was made on 6 July 1994, the public auction was held on 6 June 1995 and the certificate for sale was issued on 21 September 1995. The application by the eighth defendant was filed on 21 November 1996.

[25] It was the contention of the plaintiff and the second intervener that the application by the eighth defendant was statute barred under s 8(b) of the Limitation Act. The section applies because the claim was revenue in nature and when making the claim the plaintiff was acting under a delegated power derived from the state authority. As such the limitation period commenced from the date of the advertisement of the proclamation of sale, that is, 21 May 1995 in the *Malay Mail* newspaper. There was therefore a delay of 17 months in the application by the eighth defendant.

[26] Section 8(b) of the Limitation Act 1953 states as follows:

> An action —
>
> to set aside a sale for arrears of Government or State revenue or for any demand recoverable as such arrears; shall not be brought after the expiration of one (1) year from the date on which the sale is confirmed or would otherwise have become final or conclusive had no such action been bought or when the attachment ceased or transfer or payment was made, as the case may be.

[27] However, the eighth defendant contended that s 8 of the Limitation Act should be read with O 10 r 5 of the RHC which requires service of the writ of originating summons to the defendants.

[28] Further it was argued that the Limitation Act 1953 does not apply to claims pursuant to s 124 of the Local Government Act 1976 as that section clearly provides that the Public Authorities Protection Ordinance 1948 shall apply to any action, suit, prosecution or proceeding against a local authority in respect of any act, neglect or fault done or committed.

[29] Section 124 of the Local Government Act 1976 reads:

> The Public Authorities Protection Ordinance 1948, shall apply to any action, suit, prosecution or proceeding against any local authority or against any Councillor, officer, employee, servant or agent of any local authority in respect of any act, neglect or default done or committed.

[30] Section 2 of the Public Authorities Protection Ordinance 1948 states:

> Where, after the coming into force of this Act, any suit, action, prosecution or other proceedings is commenced in the Federation against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, any duty or authority the following provisions shall have affect —
>
> (a) the suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced within thirty six months next after the act, neglect or default complained of or in the case of a continuance of injury or damage, within thirty six months next after the ceasing thereof;

[31] Now, the scope of 'public duty' under the Public Authorities Protection Ordinance 1948 was considered in the case of *Lee Hock Ning v Government of Malaysia* [1972] 2 MLJ 12. There it was held that the

non-payment of monies was not in pursuance of a public duty. Consequently, it could not have come within the provisions of s 2 of the Public Authorities Protection Ordinance. It is immaterial that the contract may have been entered into for the purpose of performing a statutory duty. If the act complained of is the breach of contract, the statutory protection of the Ordinance cannot be invoked on the ground that the contract entered into for the purpose of carrying out duties imposed by the contract.

[32] Similarly in the case of *Ban Guan Hin Reality Sdn Bhd v Sunny Yap Chiok Sai & Ors* [1989] 1 MLJ 131 the word 'public duty or authority' was also considered by the court. It was held that the allegation of fraudulent usage of money paid to the customs authorities cannot be said to be an act done in pursuance or execution or intended execution of any written law, of any public duty or authority or in respect of any alleged neglect or default in the execution thereof and accordingly protection under the Public Authorities Protection Ordinance cannot be invoked.

[33] Thus, having given the varying contentions our anxious consideration and bearing in mind the judicial pronouncements by our courts on the point raised we were inclined to agree that s 8(b) of the Limitation Act 1953 should apply. However the period should commence from the date when the sale was confirmed, that is, 21 September 1995 and not, as submitted by learned counsel for the plaintiff, from 21 May 1995 which was the publication date of the proclamation of sale in the Malay Mail. The eighth defendant should have therefore taken action within one year from 21 September 1995. In this case the eighth defendant only filed her application on 21 November 1996. There was therefore two months delay and accordingly time-barred under the said s 8(b).

Issue (c)

[34] In view of our findings above it is not crucial that we should consider this point raised by the second intervener. However in the event that we are wrong in the first two issues we now deal with this issue.

[35] Section 340 of the National Land Code ('NLC') confers an indefeasible title to the registered proprietor of any land subject of course to sub-ss 340(2) and (3) NLC.

[36] Section 340 of the NLC reads:

(1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease,

charge or easement is for the time being registered, shall, subject to the following provisions of the section, be indefeasible.

(2) The title or interest of any such person or body shall not be indefeasible —

(a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or

(b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

(c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

(3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section (2) —

(a) it shall be liable to set aside in the hands of any person or body to whom it may subsequently be transferred; and

(b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested.

Provided that nothing in this sun-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

(4) Nothing in this section shall prejudice or prevent —

(a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or

(b) the determination of any title or interest by operation of law.

[37] On this issue the eighth defendant premised her contention that the certificate of sale was an insufficient or void instrument for the transfer of ownership of the said land and relied on s 340(2)(b) of the NLC. The decision of the Court of Appeal in *Boonsom Boonyanit v Adorna Properties Sdn Bhd* [1997] 2 MLJ 62 was cited as the correct judicial pronouncement on the point. Alternatively it was argued that the Federal Court decision in *Adorna Properties Sdn Bhd v Boonsom Boonyanit @ Sun Yok Eng* [2001] 1 MLJ 241 reversing the Court of Appeal should be ruled ultra vires as it failed to consider art 13(1) of the Federal Constitution.

[38] With respect we think the eighth defendant failed to appreciate that until and unless the Federal Court in another panel comes up with a different view on such issue or that the decision is invalidated by legislative mean the position of the law for now on indefeasibility should be as propounded by the Federal Court.

[39] Article 13(1) states:

(1) No person shall be deprived of property save in accordance with law.

[40] We find no merit in the alternative argument advanced by the eighth defendant. The decision by the Federal Court in *Adorna Properties Sdn Bhd* is what the law is on the indefeasibility of title to land. Hence there is no question of deprivation of property not in accordance with law.

[41] There is also merit in the submission by the second intervener when he relied on s 340(3) of the NLC and as interpreted by the Federal Court in *Adorna Properties Sdn Bhd* (supra). The Federal Court held that 'the proviso to sub-s (3) of the NLC deals with only one class or category of registered proprietors for the time being. It excludes from the main provision of sub-s (3) this category of registered proprietors so that these proprietors are not caught by the main provision of this subsection. Who are these proprietors? The proviso says that any purchaser in good faith and for valuable consideration or any person or body claiming through or under him are excluded from the application of the substantive provision of sub-s (3). For this category of registered proprietors, they obtained immediate indefeasibility notwithstanding that they acquired their titles under a forged document even if the instrument of transfer was forged, the respondent nevertheless obtained an indefeasible title to the said land.

[42] Thus, being a purchaser in good faith and for valuable consideration having paid within the stipulated time the balance of the purchase price arising from the public auction sale, the second intervener had acquired an indefeasible title or interest to the said land upon being registered as the registered proprietor.

[43] The foregoing view is not without any judicial support. In *Asia Commercial Finance (M) Sdn Bhd v Development and Realtor Sdn Bhd* [1992] 2 MLJ 504, Edgar Joseph Junior J (as he then was) opined that if:

> on the other hand, the statutory conditions have not been complied with the chargee has neither the rights nor the power to sell the land and if he purports to do so any certificate of sale issued pursuant thereto would be void and of no effect

A but if the proper registering authority registers such a certificate of sale, a bona fide purchaser for value without notice would take a good title.

CONCLUSION

B **[44]** For the reasons herein we were unanimous in coming to our above decision as we did. But it is to be noted that as at the date of rendering these reasons in writing our learned brother YA Dato' Azmel bin Haji Ma'amor has since retired. YA Tengku Dato' Baharudin Shah bin Tengku Mahmud has however read this judgment in draft and agreed with it.

C *Eighth defendant's appeal dismissed with costs and the plaintiff's and second intervener's appeal allowed with costs.*

D Reported by Augustine Soosay

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